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10/044,304	10/25/2001	Andreas W. Dreher	OPH.004A	6808

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EXAMINER

STULTZ, JESSICA T

ART UNIT	PAPER NUMBER
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2873

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/044,304

Applicant(s)

DREHER, ANDREAS W.

Examiner

Jessica T Stultz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 1, 2 and 4-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 12-17, 19, 21 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 18, 20, 22 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9-11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Merle.

Regarding claims 25-26, Merle discloses an article of manufacture comprising: a first layer comprising a first lens having a constant index of refraction (Column 6, lines 63-65, wherein the first lens is “80”, Figure 16); a second layer comprising a stopper (Shown in Figure 16, wherein the edges of lens “82” form a stopper for the second layer “92”) and ultraviolet curing epoxy having an index of refraction that can be changed by exposure to radiation (Column 6, line 63-Column 7, line 3 and Column 7, lines 43-47, wherein the second layer is the adhesive which is placed in the space “92”, Figure 16); and a third layer comprising a second lens blank having a constant index of refraction (Column 6, lines 63-65, wherein the third layer is lens “82”, Figure 16), the second layer being sandwiched between the first layer and the third layer (Figure 16).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 25-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Bruns.

Regarding claims 25-26, Bruns discloses an article of manufacture comprising: a first layer comprising a first lens having a constant index of refraction (Section 42, wherein the lens is "232", Figure 8); a second layer comprising a stopper (Section 25, wherein the epoxy layer "104" has a stopper barrier "108", Figures 2-3) and ultraviolet curing epoxy having an index of refraction that can be changed by exposure to radiation (Section 42, wherein the epoxy layer is "234", Figure 8); and a third layer comprising a second lens blank having a constant index of refraction (Section 42, wherein the lens blank is transparent cover "236", Figure 8), the second layer being sandwiched between the first layer and the third layer (Figure 8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 12-17, 19, 21, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Onoki in view of Merle.

Regarding claim 3 and 19, Onoki discloses an eyeglass lens comprising: a first layer comprising a lens having a constant index of refraction (Column 3, lines 65-68, wherein the first lens is "2", Figures 1 and 2a); and a second layer comprising a material having a substantially constant thickness (Column 6, lines 38-54, Figures 1 and 4-9, wherein the layer of adhesive is "4"). As stated above, Onoki discloses a laminate eyeglass lens having a first layer with a

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constant index of refraction and a second layer having a substantial constant thickness used as an adhesive to hold the two portions of the laminate lenses together but does not specifically disclose this second layer as having a varying index of refraction. Merle teaches that in a laminate eyeglass lens (Column 6, lines 63-65, wherein the first lens is "80", Figure 16) having a first layer with a constant index of refraction (Column 6, lines 63-65, wherein the first lens is "80" and the second lens is "82", Figure 16) and a second layer used as an adhesive to hold the two portions of the laminate lenses together (Column 6, line 63-Column 7, line 3, wherein the second layer is the adhesive which is placed in the space "92" between the first and second lenses "80" and "82", Figure 16), that this second layer can be in the form of an epoxy comprising a material having a variable index of refraction for the purpose of providing the means of adhesively connecting the two optical portions of the laminate lens (Column 7, lines 43-47, wherein the adhesive can be epoxy having a varying index of refraction, and Column 6, line 63-Column 7, line 3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the laminate lens of Onoki as having the second layer, i.e. the adhesive layer as having a varying index of refraction, since Merle teaches that in a laminate eyeglass lens having a first layer with a constant index of refraction and a second layer used as an adhesive to hold two portions of the laminate lenses together, that this second layer can be in the form of an epoxy comprising a material having a variable index of refraction for the purpose of providing the means of adhesively connecting the two optical portions of the laminate lens.

Regarding claims 12-13, Onoki further discloses that the eyeglass lens comprise a third layer (Column 4, line 1, wherein the third lens element is "3", Figures 1-3) wherein the second layer is sandwiched between the first and third layer as a sandwich (Figure 1).

Regarding claims 14-17, Onoki discloses an eyeglass lens as disclosed above, but does not specifically disclose that the lens is configured to correct higher and lower order aberrations along the optical axis of a patient at first and second discrete viewing angles. However, it is well known in the art of eyeglass lens for the lens to correct for high and low order aberrations to provide the required aberration correction needs of the eyeglass user. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the eyeglass lens of Onoki to correct higher and lower order aberrations along the optical axis of a patient at first and second discrete viewing angles since it is well known in the art of eyeglass lens for the lens to correct for high and low order aberrations to provide the required aberration correction needs of the eyeglass user.

Regarding claim 21, Onoki further discloses that the eyeglass lens is configured to correct for both far vision and reading vision (Column 5, lines 25-35 and Column 6, lines 55-61, wherein the lens is described as being bifocal or progressive which correct for far vision and reading vision).

Regarding claim 24, Onoki further discloses that the second layer has been cured to match a wavefront prescription of a patient (Abstract and Column 6, line 62- Column 7, line 2, wherein the prescription of the patient is met).

Claims 3, 12-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruns.

Regarding claims 3 and 19, Bruns discloses a lens comprising a first layer comprising a lens having a constant index of refraction (Section 42, wherein the lens is “232”, Figure 8); and at least one second layer having epoxy a varying index of refraction (Section 42, wherein the epoxy layer is “234”, Figure 8), the second layer having a substantially constant thickness (Figure 8), but does not specifically disclose that the lens is an eyeglass lens. However, Bruns discloses that “the present invention can be used to correct aberrations in virtually any optical system” (Section 44) and that it can be used with a lens providing positive optical power, or negative optical power, or to correct astigmatism (Section 42). The examiner takes Judicial Notice that it is well known in the art of eyeglass lenses for such lenses to have either positive optical power, or negative optical power, or to correct astigmatism to provide the required corrective needs of the eyeglass user. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the lens of Bruns as an eyeglass lens since Bruns discloses that the invention can be used to correct aberrations in virtually any optical system which would make obvious its use in eyeglass lenses, a known optical system, and since Bruns further teaches that it can be used with a lens providing positive optical power, or negative optical power, or to correct astigmatism and it is well known in the art of eyeglass lenses for such lenses to have either positive optical power, or negative optical power, or to correct astigmatism to provide the required corrective needs of the eyeglass user.

Regarding claims 12-13, Bruns further discloses that the lens comprise a third layer (Section 42, wherein the third layer is the transparent cover “236”, Figure 8) wherein the second layer is sandwiched between the first and third layer as a sandwich (Figure 8).

Regarding claims 14-17, Bruns discloses a lens as disclosed above, but does not specifically disclose that the lens is configured to correct higher and lower order aberrations along the optical axis of a patient at first and second discrete viewing angles. However, it is well known in the art of eyeglass lens for the lens to correct for high and low order aberrations to provide the required aberration correction needs of the eyeglass user. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the eyeglass lens of Bruns to correct higher and lower order aberrations along the optical axis of a patient at first and second discrete viewing angles since it is well known in the art of eyeglass lens for the lens to correct for high and low order aberrations to provide the required aberration correction needs of the eyeglass user.

Allowable Subject Matter

Claims 18, 20, and 22-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: none of the prior art alone or in combination disclose or teach of the claimed combination of limitations to warrant a rejection under 35 USC 102 or 103.

Specifically regarding claims 18, none of the prior art alone or in combination disclose or teach of an eyeglass lens as disclosed above specifically wherein the first layer is configured to correct at least one lower order aberration along an optical axis of a patient, and in which the second layer comprises a plurality of zones, wherein each of the zones corrects for higher order aberrations of the patient.

Specifically regarding claims 20, none of the prior art alone or in combination disclose or teach of an eyeglass lens as disclosed above specifically configured to create aberrations that warp a patient's retinal image around dysfunctional retinal tissue.

Specifically regarding claim 22, none of the prior art alone or in combination disclose or teach of an eyeglass lens as disclosed above specifically wherein the varying index of refraction layer is configured to correct for reading vision.

Specifically regarding claim 23, none of the prior art alone or in combination disclose or teach of an eyeglass lens as disclosed above specifically wherein second layer comprises a plurality of zones, each of the zones being configured wherein the varying index of refraction in the zones corrects for the patient's vision at a second distance.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T Stultz whose telephone number is (703) 305-6106. The examiner can normally be reached on M-Th 7:30-5, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 703-308-4883. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



Jessica Stultz



JORDAN SCHWARTZ
PRIMARY EXAMINER